

IN THE UNITED STATES DISTRICT COURT  
FOR THE SOUTHERN DISTRICT OF TEXAS  
BROWNSVILLE DIVISION

UNITED STATES OF AMERICA	§	
	§	
V.	§	CRIMINAL NO. 1:12-CR-435-1
	§	
TOMÁS YARRINGTON RUVALCABA	§	

**DEFENDANT'S MOTION TO RECONSIDER THE  
ORDER OF DETENTION DATED APRIL 26, 2018, AND  
EMERGENCY REQUEST FOR RELEASE UPON REASONABLE CONDITIONS**

TO THE HONORABLE HILDA TAGLE,  
SENIOR UNITED STATES DISTRICT JUDGE:

NOW COMES TOMÁS YARRINGTON RUVALCABA, Defendant herein, by and through his counsel, and files this Emergency Motion to Reconsider this Court's Prior Order of Detention and Request for Release Upon Reasonable Conditions, stating more particularly for cause as follows:

On April 26, 2018, United States Magistrate Judge Ronald G. Morgan conducted a detention hearing in this cause and ordered Defendant detained. Doc. 72. Initially, Defendant was placed in a detention facility in San Patricio County. He has since been moved to the Federal Detention Center in Houston, Texas, and placed in the Special Housing Unit.

The Covid-19 (coronavirus) outbreak puts Defendant's life increasingly in danger as the pandemic spreads, especially because of his age and comorbidities. Despite the federal Bureau of Prison's efforts, the Covid-19 virus has now been found in at least two facilities, including FCI Oakdale in Louisiana. It is just a matter of time before it enters

FDC Houston. Due to the deadly nature of the virus, the likelihood that Defendant will appear for all court proceedings may be increased by his release. In other words, if released and placed in home confinement as a condition, Defendant's likelihood of catching the virus is dramatically decreased and his ability to appear for all court proceedings increased.

### **THE CORONAVIRUS PANDEMIC**

When Defendant was initially detained, Covid-19 had not significantly affected the United States. By February 2, 2020, with fewer than a dozen cases reported in the United States, President Trump declared that the United States had stopped the spread of the virus by restricting travel, especially from China. *See The President vs. the Experts: How Trump Downplayed the Coronavirus*, March 18, 2020, <https://www.nytimes.com/interactive/2020/03/18/us/trump-coronavirus-statements-timeline.html>. Now, less than two months later, the virus has been declared a global pandemic; some 400,000 people have tested positive worldwide; more than 16,000 people have died; despite limited testing, more than 42,000 people have tested positive in the United States, and more than 500 people have died; and a number of states and localities have issued stay-at-home orders, covering more than 100,000,000 Americans.

The Centers for Disease Control and Prevention (CDC) has identified old age as a key risk factor for severe health impact from Covid-19. CDC, *Coronavirus Disease 2019 (COVID-19), Are You at Higher Risk for Severe Illness*, <https://www.cdc.gov/coronavirus/2019-ncov/specific-groups/high-risk-complications/older-adults.html>. People over 60 are particularly vulnerable to severe or

fatal infection. *See How to Protect Older People From the Coronavirus*, March 14, 2020, <https://www.nytimes.com/2020/03/14/health/coronavirus-elderly-protection.html>.

Among the groups most at risk from the relentless spread of Covid-19 are prisoners, and especially elderly prisoners, given the close and sometimes unsanitary living conditions and the frequent coming and going of prisoners and corrections officials. As Judge Robert C. Jones observed recently,

Conditions of pretrial confinement create the ideal environment for the transmission of contagious diseases. Inmates cycle in and out of detention facilities from all over the world and country, and people who work in the facilities including correctional officers, and care and service providers leave and return daily, without screening. Incarcerated people have poorer health than the general population, and even at the best of times, medical care is limited. Many people who are incarcerated have chronic conditions, like diabetes, asthma, high blood pressure, hepatitis, or HIV, which makes them vulnerable to severe forms of COVID-19.

*United States v. Barkman*, 2020 U.S. Dist. LEXIS 45628, at \*3 (D. Nev. March 17, 2020) (footnotes omitted).<sup>1</sup> Recognizing the increased danger inmates face, Iran released 85,000 prisoners as the virus rampaged through that country. Adam Payne, *Iran has released 85,000 prisoners in an emergency bid to stop the spread of the coronavirus*, Business Insider, March 17, 2020, <https://www.businessinsider.com/coronavirus-covid-19-iran-releases-eighty-five-thousand-prisoners-2020-3>.

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<sup>1</sup> See generally Joseph A. Bick, *Infection Control in Jails and Prisons*, 45 Clinical Infectious Diseases 1047 (2007), <https://academic.oup.com/cid/article/45/8/1047/344842>; The Justice Collaborative, *Explainer: Prisons and Jails Are Particularly Vulnerable to Covid-19 Outbreaks*, <https://thejusticecollaborative.com/wp-content/uploads/2020/03/TJCVulnerabilityofPrisonsandJailstoCOVID19Explainer.pdf>.

Jurisdictions around the United States have likewise begun releasing elderly, nonviolent prisoners. The Wall Street Journal reported on March 22 that "[j]ails in California, New York, Ohio, Texas and at least a dozen other states are sending low-level offenders and elderly or sickly inmates home early due to coronavirus fears." Zusha Elinson and Deanna Paul, *Jails Release Prisoners, Fearing Coronavirus Outbreak*, Wall Street Journal, March 22, 2020, <https://www.wsj.com/articles/jails-release-prisoners-fearing-coronavirus-outbreak-11584885600>. On March 22, the Supreme Court of New Jersey entered an agreed order commuting or suspending the sentences of a number of low-level inmates. *See* Exhibit A. The order recited that the parties had "reviewed certifications from healthcare professionals regarding the profound risk posed to people in correctional facilities arising from the spread of COVID-19." *Id.* at 2. Also on March 22, President Trump announced that he is considering an executive order to "free elderly, nonviolent prisoners from federal prisons amid the novel coronavirus pandemic." Ellen Cranley, *Trump is considering releasing elderly, 'totally nonviolent' offenders from federal prisons amid coronavirus outbreak*, Business Insider, March 22, 2020, <https://www.businessinsider.com/trump-consider-coronavirus-executive-order-federal-prisons2020-3>.

Until recently, the federal Bureau of Prisons had managed to keep Covid-19 out of federal prisons. In the last few days, however, that has changed. According to a March 23 news report, two inmates at FCI Oakdale in Louisiana tested positive for Covid-19. WBRZ, *Federal prison in Allen Parish confirms two coronavirus cases, Monday*, March 23, 2020, <https://www.wbrz.com/news/federal-prison-in-allen-parish-confirms->

two-coronavirus-cases-monday/. And an inmate at the federal Metropolitan Detention Center in Brooklyn, New York has also tested positive. Craig McCarthy, *First federal inmate tests positive for coronavirus*, New York Post, March 22, 2020, <https://nypost.com/2020/03/22/first-federal-inmate-tests-positive-for-coronavirus/>. It is just a matter of time--and probably not much time--before the virus infiltrates FDC-Houston, where Defendant is incarcerated.

The Covid-19 virus puts the Defendant—a 63-year-old, nonviolent inmate with high blood pressure and prediabetic high blood sugar, at grave risk of infection and death or other severe health consequence. Title 18, United States Code, section 3142(f)(2)(B) provides that this Court can consider the Covid-19 pandemic as information that did not exist at the time the detention order was entered.

Defendant requests, after considering the above, that he be released on reasonable conditions to include but not limited to home confinement, GPS electronic monitoring, daily “reporting” to Pretrial Services by phone, or any other combination of conditions which will reasonably assure the safety of Defendant and his appearance for all proceedings.

Respectfully submitted,

/s/ Chris Flood

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**CERTIFICATE OF CONFERENCE**

I hereby certify that I conferred with Assistant United States Attorney Jon Muschenheim who stated the United States is opposed to this motion.

/s/ Chris Flood

Chris Flood

**CERTIFICATE OF SERVICE**

I hereby certify that on March 27, 2020, I electronically filed the foregoing document with the Clerk of Court using CM/ECF system which will send notification of such filing to all filing users.

/s/ Chris Flood

Chris Flood